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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

HAROLD GRIFFITH, Plaintiff and Appellant, v. COUNTY OF SANTA CRUZ, Defendant and Respondent.	H033857 (Santa Cruz County Super. Ct. No. CV161305)

Plaintiff Harold Griffith sued defendant County of Santa Cruz (County) for a refund of service charges he paid in connection with his property tax bill and for a judicial declaration that the charges were unlawful. Plaintiff maintained that the charges did not comply with the County Service Area (CSA) law (former Gov. Code, § 25210.1 et seq.),[1] or with Proposition 218's requirements for special taxes, assessments, charges, or fees (Cal. Const., arts. XIII C, XIII D).[2] The trial court sustained County's demurrer without leave to amend on the ground that the entire action was barred by the statutes of limitations. We shall affirm.

[1] The Legislature completely reorganized the CSA law effective January 1, 2009. (Stats. 2008, ch. 158 (S.B. 1458) § 21.) The CSAs challenged in this case were enacted under the former law. Further unspecified section references are to the Government Code.

[2] Further unspecified references to articles are to the articles of the California Constitution.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 20, 2008, plaintiff filed a claim with the Santa Cruz County Board of Supervisors, seeking a refund of "taxes and/or assessments" that he claimed County had illegally levied upon his real property located in an unincorporated area of Santa Cruz County. County rejected the claim on April 15, 2008. On September 4, 2008, plaintiff filed the instant action for declaratory relief and refund pursuant to Revenue and Taxation Code section 5149.

In his complaint, plaintiff alleged that he made payments to County "billed as 'other charges' on his property tax bill since at least July 2004." These " 'other charges' were billed as 'service charges' " for five CSAs. The complaint described the services and the annual charges as follows:

CSA 9--$16.60 per improved parcel for street and highway lighting.

CSA 9C--$56.95 per single family residence for waste disposal sites.

CSA 9D3--$56.40 per improved parcel for road repair.

CSA 12--$6.90 per parcel for septic tank maintenance.

CSA 11--$6.58 per residential unit as loan payments for parks and recreation facilities.

The complaint further alleged that, as to all five CSAs, County had established the current amounts of the charges in 1996, 1998, and 2004. On April 29 and June 10, 2008, County extended CSAs 9, 9C, 9D3, and 12, without changing the amounts previously set.

Plaintiff maintained that the service charges were illegal because they were not levied in proportion to the benefit received by the individual properties as required by former section 25210.77a and by Proposition 218 (arts. XIII C and XIII D). None had been approved by a two-thirds vote of the people.

The complaint sought a refund of the total charges plaintiff paid since 2004 and a judicial declaration that "any and all of the charges levied by the County for County

Services Areas" were "illegal because they are and were special taxes which didn't received [*sic*] 2/3 voter approval or were or are not 'proportional to the benefits conferred on each parcel.' "

County demurred. County alleged that all five charges were governed by former section 25210.77g, which provided that any action to "validate, attack, review, set aside, void, or annul an ordinance or resolution adopted pursuant to this article and levying or fixing an assessment, charge, or fee or modifying or amending an existing ordinance or resolution" was subject to the 60-day statute of limitations contained in the validation statutes (Code Civ. Proc., § 860 et seq.).

Attached to County's pleading were a number of resolutions issued by County's board of supervisors, which showed that all the charges were fixed in 1996 or 1998[3] and that all were denominated "service charges" for the specified "County Service Areas." The resolutions also showed that, in addition to the rates described by the complaint, there were other rates for different types of parcels. The charges for street and highway lighting (CSA 9) were, as plaintiff alleged, $16.60 per improved parcel but there was also a charge for unimproved parcels, which was $8.30 and an exemption for four types of property: common area parcels, parcels with an assessed value of $5,000 or less, unbuildable parcels, and parcels dedicated to providing private water to residential areas. Charges for disposal sites (CSA 9C) were $56.95 per year per single family residence but different charges applied to multiunit dwellings, mobile homes, commercial property, agricultural land, and vacant parcels. The charges for road repair (CSA 9D3) charged $56.40 per year per improved parcel and $28.20 per year per unimproved parcel and exempted the four types of property exempted by CSA 9. Charges for septic system maintenance (CSA 12) did not apply to, among other things, parcels that did not have

[3] The resolutions showed that the charge for CSA 12 had been set in 1996 and not in 2004 as alleged in the complaint. The difference is not material to our analysis.

septic systems. And the 1998 resolution pertaining to CSA 11 applied only to "dwelling units" and specifically exempted, among others, commercial parcels, undeveloped parcels, and visitor accommodation parcels.

The trial court sustained the demurrer without leave to amend. The trial court held that former section 25210.77g applied to plaintiff's challenge to the validity of the five charges under the CSA law and, therefore, that plaintiff had 60 days from the date County had imposed the charges within which to challenge them. To the extent that plaintiff alleged that County should have reenacted any preexisting CSA charges pursuant to the requirements of Proposition 218 after it was passed in November 1996, the court held that the three-year statute of limitations (Code Civ. Proc., § 338, subd. (a)) was applicable and that it had expired. Finally, the trial court rejected plaintiff's argument that, under *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809 (*Jarvis*), a new statute of limitations began to run every time the charges were assessed and collected. The trial court found that, because the instant levies were subject to the validation statutes, *Jarvis* did not apply. Accordingly, "the public had three years from the passage of Proposition 218 to challenge these assessments. Not having brought such a challenge, the action is barred."

Judgment of dismissal was entered January 2, 2009. Plaintiff has timely appealed.

II. CONTENTIONS

As plaintiff's opening brief plainly recognizes, the controlling question is whether former section 25210.77g applies to the allegations of his complaint. If it does, the charges he challenges are subject to the validation statutes and would be considered valid if not challenged within 60 days of enactment. Plaintiff maintains, however, that the challenged levies are not service charges but are special taxes and, as such, do not fall within the scope of former section 25210.77g. Plaintiff agrees that a three-year statute of limitations applies to his contention that County should have reconsidered the preexisting

CSA charges after Proposition 218 was enacted in 1996. He argues, however, that the case is subject to the rule of *Jarvis, supra*, 25 Cal.4th at page 812, which is that the continued imposition and collection of an illegal tax is "an ongoing violation, upon which the limitations period begins anew with each collection."

III. DISCUSSION

A. Standard of Review

"On appeal from a dismissal entered after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment about whether the petition states a cause of action as a matter of law." (*City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 869.) "We deem to be true all material facts that were properly pled. [Citation.] We must also accept as true those facts that may be implied or inferred from those expressly alleged. [Citation.] We may also consider matters that may be judicially noticed, but do not accept contentions, deductions or conclusions of fact or law." (*Id.* at pp. 869-870.) "We independently construe statutory law, as its interpretation is a question of law on which we are not bound by the trial court's analysis." (*Id.* at p. 870.)

B. The Validation Statutes Apply to the Charges in Question

The charges that plaintiff challenges were ostensibly imposed under the CSA law as it existed prior to January 1, 2009. The CSA law, which is contained in chapter 2.2 of title 3, division 2 of the Government Code, was designed to give counties "an alternative method of providing services to unincorporated areas by allowing the counties to create special county service areas for the provision of services such as road maintenance, sewers, and other county services." (*Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1296.) Former article 7 of the CSA law authorized a county board of supervisors to furnish "miscellaneous extended services" to any county service area. (Former § 25210.70 et seq.) The instant levies were intended to fund services such as

highway lighting, waste disposal, and road repair, which fall generally into the category of miscellaneous extended services. (Former § 25210.4a.) Plaintiff does not challenge that characterization of the services funded under these five CSAs.

In order to fund miscellaneous extended services, former article 7 of the CSA law gave the county board of supervisors authority to "fix the rates of county service area taxes" sufficient to produce the estimated revenue. (Former § 25210.75.) Former article 7 also provided that, "in lieu of, or supplemental to, revenue obtained by the levy of taxes" a county may impose a service "charge." (Former § 25210.77a.) Charges "may vary by reason of the nature of the use or the month in which the service is rendered to correspond to the cost and value of the service. The charges may be determined by apportioning the total cost, not otherwise offset by other available revenue, of the extended service area to each parcel therein in proportion to the estimated benefits from such service to be received by each parcel." (Former § 25210.77a.) In short, a county board of supervisors had authority under former article 7 of the CSA law to furnish miscellaneous extended services and to fund them by imposing a special tax or a service charge or a combination of both.

The limitations provisions with which we are concerned were contained in former section 25210.77g, which was also part of article 7. Former section 25210.77g, provided that "any judicial action or proceeding to validate, attack, review, set aside, void, or annul an ordinance or resolution adopted pursuant to this article and levying or fixing an assessment, charge, or fee or modifying or amending an existing ordinance or resolution" must be brought pursuant to the validation statutes, which impose a 60-day statute of limitations upon all matters to which they apply. (Code Civ. Proc., §§ 860-870.)[4] Thus,

[4] Under the validation statutes, a public agency may file an action to obtain a judicial declaration of the validity of its action. Alternatively, " 'an agency may indirectly but effectively "validate" its action *by doing nothing to validate it*; unless an "interested person" brings an action of his own under [Code of Civil Procedure] section (continued)

former section 25210.77g, applied the validation statutes to any judicial action challenging a resolution or ordinance that was (1) adopted "pursuant to" article 7 and (2) which levied or fixed "an assessment, charge, or fee" or which modified or amended an existing ordinance or resolution.

Plaintiff alleges that the challenged levies are not service charges but are special taxes and, therefore, they must have been enacted pursuant to former section 25210.6a, which was part of former article 1 of the CSA law and, therefore, not subject to former section 25210.77g.[5] It is true that the law treats the different types of levies differently. Under Proposition 13, cities and counties may impose "special taxes" only if approved by a two-thirds vote of the qualified electors. (Art. XIII A, § 4.)[6] But a fee that "does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes" does not require a two-thirds vote. (§ 50076.) The difference has added importance in this case since former section 25210.77g expressly applies the validation statutes only to an "assessment, charge, or fee." By its terms, former section 25210.77g does not apply to taxes.

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863 within the 60-day period, the agency's action will become immune from attack whether it is legally valid or not.' " (*California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420, quoting *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341-342.)

[5] Former section 25210.6a, subdivision (a), specified that, notwithstanding any other provision of the CSA law, a county board of supervisors "may levy and collect a special tax in any county service area or zone within a county service area, pursuant to the procedures prescribed [by the statutes implementing article XIII A (Proposition 13)]." That section defined a "special tax," for purposes of the CSA law, as one "which applies uniformly to all taxpayers or all real property within the county service area or zone." (Former § 25210.6a, subd. (b).)

[6] Article XIII A, section 4 states: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

For purposes of the statute of limitations, however, the fundamental question on appeal is whether County could have brought a validating proceeding concerning the challenged levies such that plaintiff, as an interested person under the validation statutes (Code Civ. Proc., § 863), was required to do so by filing suit within 60 days. If County's actions were embraced by the language of former section 25210.77g, then the trial court's ruling was proper. (Cf. *Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 32.)

In the demurrer context, we accept all material facts alleged in the complaint and those of which we may take judicial notice. The complaint states that the levies were imposed as "service charges." Likewise, the resolutions attached to County's demurrer, of which we take judicial notice (Evid. Code, § 452), established that the levies were denominated and imposed as "service charges" for miscellaneous extended services. All of the charges were imposed in connection with specified CSAs and all varied "by reason of the nature of the use" of the parcels to which they applied, as specifically allowed by former section 25210.77a, the statute authorizing the use of service charges to fund these types of services. Plaintiff's *contention*--that the levies are really special taxes--is just that, a contention. We do not, in the demurrer context, accept as true a pleading's legal contentions or conclusions. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) In substance, plaintiff is attacking the validity of "service charges" on the ground the charges do not comply with the legal requirements for service charges. That attack is encompassed by former section 25210.77g, and, therefore, the validation statutes apply.

Plaintiff's contention that the validation statutes must be narrowly construed has no bearing on our analysis. The cases plaintiff cites in support of his argument are inapplicable. In both *Walters v. County of Plumas* (1976) 61 Cal.App.3d 460 (*Walters*) and *Kaatz v. City of Seaside, supra,* 143 Cal.App.4th at pages 32-33, the appellate courts construed section 53511, which extended the validation statutes to " ' "an action to determine the validity of [a public entity's] bonds, warrants, contracts, obligations or

evidences of indebtedness." ' " (*Walters*, *supra*, at p. 466.) As *Walters* noted, a broad construction of the word "contracts" in section 53511 would work a " 'far-reaching expansion' " of section 53511. (*Walters*, *supra*, at p. 466, quoting *City of Ontario v. Superior Court*, *supra*, 2 Cal.3d at p. 341.) The third case, *Starr v. City and County of San Francisco* (1977) 72 Cal.App.3d 164, 177-178, involved the doctrine of res judicata. None of these cases stands for the general proposition that validation statutes must be narrowly construed.

In the present case, we find guidance in the more general rule: "The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to settle promptly all questions about the validity of its action.' " (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842.) It is necessary, for sound fiscal planning, that County be able to promptly determine whether its actions are valid. County established the levies plaintiff challenges here as "service charges" many years ago. Plaintiff was entitled to challenge them. But he must have done so within the time allowed by former section 25210.77g.

Plaintiff contends that under *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 703-704, the reenactment of the charges in 2008 triggered a new limitations period "if the levies were not subject to the validation statutes." Since we have concluded that the validation statutes do apply, the argument must fail. Furthermore, even if the 2008 reenactments triggered a new limitations period, plaintiff did not file any challenge to the charges within the allotted 60 days. Plaintiff's claim filed with County was filed and rejected prior to any of the reenactments. He filed his complaint on September 4, 2008, more than 60 days after the latest reenactment in June 2008.

We are mindful that plaintiff's complaint seeks a refund in addition to a judicial declaration that the charges are invalid. Revenue and Taxation Code section 5096

provides that taxes paid before or after delinquency that were erroneously or illegally collected (*id.* subd. (b)), or illegally assessed or levied (*id.* subd. (c)), may be refunded. Plaintiff's complaint seeks a refund based upon the alleged illegality of the charges, illegality arising solely from the law's enactment. Since plaintiff has lost the right to challenge County's enactment of the charges, he cannot establish a basis for a refund.

In a postbriefing letter to the court plaintiff has urged us to take judicial notice of a recently filed decision by our Supreme Court, *Bonander v. Town of Tiburon* (2009) 46 Cal.4th 646 (*Bonander*). *Bonander* held that the validation statutes did not apply to challenge the validity of a special assessment enacted pursuant to the Municipal Improvement Act of 1913 (Sts. & Hy. Code, § 10000 et seq.). (*Bonander*, *supra*, at pp. 648-649.) The decision was based upon the fact that the Municipal Improvement Act authorized only the " '*legislative body or the contractor*' " to bring an action using the validation procedures. (*Id.* at p. 657, citing Sts. & Hy. Code, § 10601.) Former section 25210.77g contained no similar restriction. Accordingly, *Bonander* is inapplicable.

We conclude that former section 25210.77g applies to plaintiff's allegation that the five charges are invalid as service charges under former CSA law. Therefore, plaintiff had 60 days from the enactment of the ordinance or resolution fixing the charges within which to challenge their validity. Since the face of the complaint shows that those 60 days expired before plaintiff filed the complaint, these claims are barred as a matter of law.

C. Three-Year Statute of Limitations Applies to County's Failure to Revise Charges After Passage of Proposition 218

Plaintiff's complaint also alleges that the charges are illegal because they do not comply with Proposition 218. Proposition 218 was passed by the voters on November 5, 1996, *after* the charges for most of the CSAs were fixed. (2A West's Ann. Cal. Const. art. XIII D (2009 Cum. pocket part) p. 102.) According to the complaint, the passage of Proposition 218 rendered the charges illegal because Proposition 218, and its

implementing statutes, imposed certain proportionality and voter approval requirements with which the charges did not comply. (§ 53750 et seq.; "Proposition 218 Omnibus Implementation Act.")

Implicit in plaintiff's challenge is the allegation that County improperly failed to reconsider the then-existing charges after the passage of Proposition 218. This failure to act is not listed as one of the actions subject to former section 25210.77g, which applies only to resolutions or ordinance "levying or fixing an assessment, charge, or fee . . . ." Accordingly, the parties agree that Code of Civil Procedure section 338, subdivision (a), which sets a three-year period for an action "upon a liability created by statute," applies to plaintiff's allegation that County improperly failed to bring the charges into line with Proposition 218 requirements. (Cf. *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 772.)

To the extent plaintiff's complaint seeks a judicial declaration that the CSAs, validated prior to the passage of Proposition 218, became unenforceable thereafter, the complaint is untimely. Well over three years have passed since the passage of Proposition 218. If the constitutional amendment and the statutes implementing it obligated County to repeal or amend the CSA ordinances to conform to state law, "that duty first arose--and was first violated by the County's inaction" when the initiative measure became effective. (*Travis v. County of Santa Cruz*, *supra*, 33 Cal.4th at p. 773.) Thus, an action to enforce County's asserted duty "had to be brought within three years of its initial violation, i.e., three years from the effective date of the assertedly preemptive statute." (*Ibid.*) To the extent plaintiff's complaint seeks a judicial declaration that the later-enacted charges are illegal, since those charges were "fixed" after the passage of Proposition 218, those charges are subject to former section 25210.77g and, therefore, were validated by the failure to challenge them within 60 days of their enactment.

D. The Continuous Accrual Rule of Jarvis *Does Not Apply*

Plaintiff finally argues that, for purposes of his refund action, the three-year statute of limitations begins to run anew with each collection of the allegedly illegal tax. (*Jarvis, supra*, 25 Cal.4th 809.) We disagree.

In *Jarvis, supra*, 25 Cal.4th at pages 814-815, the plaintiffs alleged an ongoing violation of a statutory requirement that the city submit a utility tax to the voters for approval. There was no dispute that the tax was a general tax and that it had not been enacted as existing law required. The Supreme Court held, that "where the three-year limitations period for actions on a liability created by statute (Code Civ. Proc., § 338, subd. (a)) applies, and no other statute or constitutional rule provides differently, the validity of a tax measure may be challenged within the statutory period after any collection of the tax, regardless of whether more than three years have passed since the tax measure was adopted." (*Jarvis, supra*, at p. 825.) But *Jarvis* expressly limited that holding, stating: "We are not concerned in this case with bond issues or other governmental actions that, by state law, are made subject to the accelerated validation procedures of Code of Civil Procedure sections 860-870.5." (*Ibid*.) In the present case, the accelerated validation procedures *do* apply. The continuous accrual doctrine is, therefore, inapplicable.

IV. DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.